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Attorneys for Defendants
RED HAT, INC. and RED HAT MIDDLEWARE, LLC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FIRESTAR SOFTWARE, INC.,

Plaintiff,

v.

RED HAT, INC., et al.,

Defendants.

Case No. C 07-80204 MISC MMC (EMC)

**DECLARATION OF JON R. PIERCE IN
SUPPORT OF OPPOSITION TO
THOUGHT, INC.'S MOTION TO QUASH
THIRD PARTY SUBPOENA, OR IN THE
ALTERNATIVE, FOR A PROTECTIVE
ORDER**

I, Jon R. Pierce, declare as follows:

1. I am an associate attorney at the law firm of Kilpatrick Stockton LLP, counsel for Defendants Red Hat, Inc. and Red Hat Middleware, LLC (collectively, "Red Hat") in Case No. 2:06-CV258 (TJW) pending in the United States District Court for the Eastern District of Texas. I have personal knowledge of the matters stated herein, and, if called as a witness, I could and would testify competently thereto.

2. FireStar Software, Inc. ("FireStar") filed a complaint in the United States District Court for the Eastern District of Texas on June 26, 2006, alleging that Red Hat infringed United

1 States Patent No. 6,101,502. FireStar has since filed amended complaints on October 19, 2006,
2 November 8, 2006, and June 8, 2007. Red Hat made its first appearance when it filed an Answer to
3 FireStar's Second Amended Complaint on December 8, 2006.

4 3. On May 23, 2007, the United States District Court for the Eastern District of Texas
5 issued a *sua sponte* order granting both parties the ability to seek discovery relevant to their
6 contentions. A true and correct copy of this order is attached hereto as Exhibit A.

7 4. In light of the court's order, Red Hat served discovery on FireStar seeking information
8 relating to the purported invention at issue as well as prior art. Red Hat also served numerous third
9 party document subpoenas seeking information relating to prior art computer software and other
10 materials, including the one that it served on Thought, Inc. ("Thought"). A true and correct copy of
11 Red Hat's subpoena to Thought is attached hereto as Exhibit B.

12 5. On July 13, 2007, I corresponded via telephone with Thought's Chief Financial
13 Officer, Greg Baker, and subsequently provided Mr. Baker a courtesy copy, via e-mail, of the Exhibit
14 A to the subpoena that Red Hat planned to serve. A true and correct copy of my email to Mr. Baker is
15 attached hereto as Exhibit C.

16 6. On August 6, 2007, having not heard back from Thought, Red Hat served the
17 subpoena.

18 7. On August 10, 2007, Mr. Baker contacted me and arranged for a teleconference with
19 the two of us, my colleague Steve Moore, and Thought's outside counsel. During the conversation,
20 Mr. Baker and counsel for Thought stated that the documents that Red Hat was seeking were
21 available only in electronic form on Thought's legacy systems. Thought subsequently promised that
22 it would contact Red Hat to provide estimates as to how long it would take and how much it would
23 likely cost to recover the documents.

24 8. After business hours on August 15, 2007, Thought sent my firm a long and detailed e-
25 mail demanding an advance payment "of \$35,000 [\$21,000 (engineering) + \$7,000 (legal) + \$7,000
26 (mgmt)]." Before Red Hat had the opportunity to respond to Thought's demands, Thought filed this
27 Motion to Quash. Subsequently, my firm has repeatedly sought in good faith to meet and confer with

1 Thought and to resolve this dispute. However, Thought has refused all such efforts, demanding
2 \$10,000 as a condition to any meet and confer following the first two efforts and failing to respond
3 altogether to the third. True and correct copies of the correspondence exchanged between my firm
4 and Thought's counsel, John Jason Gentry Mullins, after the Motion to Quash was filed are attached
5 hereto as Exhibit D.

6 9. My firm agreed both verbally during the August 10, 2007 telephone conference, and
7 in writing in later correspondence, that Thought could have additional time to produce documents
8 beyond the 14 days permitted under the subpoena. Red Hat has served dozens of third-party
9 document subpoenas in this litigation. Red Hat has freely granted additional time to respond to any
10 party requesting such time including Thought.

11 10. My firm has explained to Thought's counsel how to preserve any confidentiality of its
12 documents under the Eastern District of Texas' Patent Rule 2-2.

13 11. Red Hat has agreed to reimburse Thought for the reasonable costs related to the
14 recovery and production of the responsive documents. For example, Red Hat has offered either to (1)
15 pay the actual rates for the actual hours spent by Thought personnel to retrieve electronic files from
16 Thought's legacy computer systems, up to a maximum of \$4,000.00 without advance consent from
17 Red Hat, or (2) hire a third-party computer forensics expert to retrieve the data from Thought's
18 systems.

19 I declare under penalty of perjury under the laws of the States of California and North
20 Carolina that the foregoing is true and correct and that this declaration was executed this 12th day of
21 September, 2007, in Winston-Salem, North Carolina.

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Jon R. Pierce